



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

HD:hd

Docket No: 03811-99

12 November 1999

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: LCDR [REDACTED] JAGC, USN [REDACTED]

REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 1 Jun 99 w/attachments

(2) PERS-311 memo dtd 16 Aug 99

(3) Subject's ltr dtd 23 Sep 99

(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by modifying the fitness report for 1 November 1994 to 31 October 1995 by changing the entry in block 73 ("Physical Readiness") from "F/WS" (failed Physical Readiness Test (PRT)/within height/weight or body fat standards) to "P/WS" (passed PRT/within height/weight or body fat standards), and deleting the entire third paragraph from block 88 ("Comments"), which reads as follows:

[Petitioner] did not pass the September PRT cycle because she exceeded the maximum run time by 15 seconds. I have no doubt that she is committed to physical fitness and will, as she has in the past, successfully complete the next PRT cycle.

A copy of the fitness report in question is at Tab A.

2. The Board, consisting of Messrs. Goldsmith, McCulloch and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 4 November 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner contends inaccurate measurements of the September 1995 PRT course at the Naval and Marine Corps Reserve Center, Des Moines, Iowa compromised the test scores of the PRT; that her failure cannot be substantiated; and that any adverse comments relating to a failed PRT in the fitness report at issue are unjust and should be removed. She submitted two affidavits (enclosures 2 and 3 to her application), each dated 8 August 1998, in support of her request. The first is from a petty officer first class who reported to the reserve center in February 1997, and was the command fitness coordinator on the date of the affidavit. He states that he measured the running course in preparation for the September 1997 PRT and found it to be "significantly longer" than the 1.5 miles required by regulation; that in reviewing and updating members' PRT files at the center, he noted Petitioner had run the course in September 1995 and failed by 15 seconds, resulting in an adverse fitness report; that her score was 17 minutes, 30 seconds, whereas a passing score was 17 minutes, 15 seconds; and that in his opinion, Petitioner would have passed the PRT run had the course been accurately measured. The second affidavit is from the then present reserve center commanding officer, who states that in or around September 1997, he learned that the previous command had conducted PRT's on a running course "significantly longer" than the required 1.5 miles. He further states he is aware of the command fitness coordinator's affidavit regarding Petitioner, and he agrees that "the excessive length of the running course, under the prior command, compromises the accuracy of [Petitioner's] test score to the extent that any adverse documentation making reference to a PRT failure cannot be substantiated and therefore, is unjust."

d. Petitioner says in July 1998, after the retirement ceremony of the reporting senior who submitted the fitness report in question, she and the successor unit commanding officer approached him with a proposed letter-supplement incorporating the changes she now seeks; but she says he refused to sign it. She says the two affidavits described above were forwarded to the reporting senior on 14 October 1998, but he has refused to make any corrections to the fitness report. She reports he has had conversations with her executive officer that "seem to indicate if [the officer who submitted an affidavit] writes a letter that voids the test or says that I passed the test he would be willing to make some correction." She states she considers this an unreasonable request, since the officer who gave the affidavit was not the reserve center commanding officer when the PRT in question was given; and significant time has elapsed, such that time is now of the essence in resolving this issue.

e. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command office having cognizance over officer fitness reports, has commented to the effect that Petitioner's request should be denied. PERS-311 states that only the reporting senior who signed the contested fitness report has authority to change it; that they did not request comment from the reporting senior, since Petitioner's application indicates he is aware of her allegations; that she may submit a statement to the report via the reporting senior; and that she does not prove the report to be unjust or in error.

f. Enclosure (3) is Petitioner's response to the PERS-311 advisory opinion. She contends that submitting a statement to the contested report, without removing the negative entries, would not be an adequate remedy. She says if this Board is not comfortable with changing the block 73 entry to show she passed the PRT, the only possible entry necessary is a code indicating she was exempt from the PRT. She states it is her understanding that the Board does have the authority to correct errors in fitness reports; and that technically, she is not asking for a correction, but rather is asking that unsupported factual statements in her fitness report be deleted. She says her successor unit commanding officer supports her petition, and has tried unsuccessfully to persuade the reporting senior who submitted the contested report to take corrective action. Finally, she stresses that the reporting senior has "failed to give a reason for his unwillingness to correct the fitness report"; and that the persons who gave the affidavits approached her and urged her to seek recourse.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds the existence of an injustice warranting the requested relief. The affidavits provided persuade the Board that the running course was too long; and that had it been the correct length, Petitioner would have passed the run portion of the PRT. In addition, they note that the reporting senior has offered no explanation for his failure to support Petitioner's position. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by making the following changes to her fitness report for 1 November 1994 to 31 October 1995, dated 4 November 1995 and signed by Captain Robert H. Carpenter, Jr., JAGC, USNR:

(1) Block 73 ("Physical Readiness"): Change from "F/WS" to "P/WS."

(2) Block 88 ("Comments"): Delete the entire third paragraph, which reads as follows:

[Petitioner] did not pass the September PRT cycle because she exceeded the maximum run time by 15 seconds. I have no doubt that she is committed to physical fitness and will, as she has in the past, successfully complete the next PRT cycle.


b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a

confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

DEC 17 1999


W. DEAN PFEIFFER

Reviewed and approved:


Charles L. Tompkins
Deputy Assistant Secretary of the Navy
(Personnel Programs)



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NAVY PERSONNEL COMMAND
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1610
PERS-311
16 August 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LCDR [REDACTED], USN [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests to change her fitness report for the period 1 October 1994 to 31 October 1995.

2. Based on our review of the material provided, we find the following:

a. A review of the member record revealed the fitness report in question to be on file. It is signed by the member acknowledging the contents of the fitness report and her right to submit a statement. The member did not indicate she desired to make a statement.

b. [REDACTED] is requesting that we change Block-78, Physical Readiness Test (PRT) results from F/WS to P/WS and delete that portion of Block-88, pertaining to PRT.

c. We cannot make the changes the member requested. Only the reporting senior who signed the report has the authority to change a fitness report. We did not request comments from the reporting senior since the material provided in the member's petition indicate the reporting senior is aware of the member's allegations.

d. If the member desires, she may submit a statement to be filed with the fitness report in her record. The statement must be temperate, limited to pertinent facts, and may not question or impugn the motives of the reporting senior or other individuals. The statement may be no more than two pages, have no enclosures. The statement must be forwarded to Naval Personnel Command (PERS-311) via the reporting senior who submitted the original report for his endorsement.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.



Head, Performance
Evaluation Branch